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conclusions to give the *prima facie* presumption of correctness, and the certificate of facts should be in such detail, by schedule or otherwise, as to the several items which must be considered by the Commission in reaching its decision, as to show such items separately.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 495.]

**2. Constitutional Law (§ 298 (7)\*)—Adopting Rate Recommended by Engineer without Regard to Pleadings Held to Amount to a Denial of Due Process of Law.**—Action of State Corporation Commission in considering the report of an engineer and in adopting the rate thereby recommended for electric power, without any opportunity given the power company to consider such report, or to present its views on the subject, such report recommending a different kind of rate schedule from that contemplated by the pleadings and the proofs amounted to a denial of a hearing and denial of due process of law.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 209.]

Error to State Corporation Commission.

Proceeding by the Commonwealth of Virginia, on the relation of the National Carbide Corporation, against the Appalachian Power Company to fix electric rates. From an order of the State Corporation Commission, the Power Company brings error. Remanded for further proceedings, appeal to be considered as still pending for certain purposes.

*Robert E. Scott*, of Richmond, for plaintiff in error.

*John S. Draper, Jr.*, of Pulaski, and *H. T. Hall*, of Roanoke, for defendant in error.

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#### ELMOE *v.* COMMONWEALTH.

Jan. 19, 1922.

[110 S. E. 257.]

**1. Homicide (§ 340 (1)\*)—Instruction Concerning the Effect of Accused's Possession of Stolen Property Not Prejudicial.**—Where accused and deceased were strangers, and property on deceased's person when killed was found the following day in the possession of accused, who gave a false account of the manner of obtaining possession, an instruction that the exclusive possession of stolen goods was of itself not even *prima facie* evidence of the murder of deceased, but such possession was a most material circumstance, and, where in addition thereto other inculpatory circumstances were proved, such as the refusal to give any account, or the giving of a false account of the possession, such proof would warrant a conviction that there should be some evidence of guilty conduct besides the bare possession of the stolen property, that extrinsic facts and circumstances might constitute such additional evidence, and that it was for the jury under all

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

the circumstances to determine the value of such refusal or false account, was not error prejudicial to accused.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 161.]

**2. Homicide (§§ 174 (5), 234 (8)\*)—Defendant's Possession of Stolen Property May Be Considered, but Reasonable Doubt Entitles Defendant to Acquittal.**—Defendant's recent possession of property on deceased's person at the time of the homicide is merely a matter of evidence to be considered with other evidence, and does not throw the burden on accused to overcome the presumption arising therefrom, and if, on the whole evidence including such recent possession, a reasonable doubt remains in the minds of the jurors as to defendant's guilt, he is entitled to the benefit of such doubt.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 638.]

**3. Criminal Law (§ 810\*)—Instruction as to Possession of Stolen Property Not in Conflict with Instruction on Reasonable Doubt.**—On a trial for murder, an instruction as to the effect of evidence of defendant's exclusive possession of property in the possession of deceased at the time of his death held not in conflict with instructions as to the presumption of innocence and the burden resting on the commonwealth to prove defendant's guilt beyond a reasonable doubt.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 736.]

**4. Homicide (§ 253 (2)\*)—Evidence Sufficient to Support Conviction.**—On a trial for murder, where there was evidence that a pistol and holster found in defendant's possession was on deceased's person when last seen alive, evidence held sufficient to support a verdict of first degree murder against defendant.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 152.]

Error to Hastings Court of Richmond.

Will Elmoe was convicted of murder on the first degree, and he brings error. Affirmed.

*Thos. I. Talley and Geo. L. Oliver*, both of Richmond, for plaintiff in error.

*Jno. R. Saunders, Atty. Gen., J. D. Hank, Jr., Asst. Atty. Gen., and Leon M. Bazile, 2d Asst. Atty. Gen.*, for the Commonwealth.

#### NUSBAUM v. CITY BANK & TRUST CO.

Jan. 19, 1922.

[110 S. E. 363.]

**1. Bankruptcy (§ 151\*)—Trustee's Title Is Very Broad One.**—The rights of the trustee in bankruptcy are not limited to the rights of a judgment creditor holding an execution returned unsatisfied, given him by Bankruptcy Act, § 47a, as amended by Act June 25, 1910 (U. S. Comp. St. § 9631), but under other sections of the act he takes all the rights of the bankrupt in his property, and all of the rights of

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